



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/724,950

12/01/2003

Andrew D. Wilson

MS303183.2

3606

27195 7590 06/20/2007

AMIN. TUROCY & CALVIN, LLP  
24TH FLOOR, NATIONAL CITY CENTER  
1900 EAST NINTH STREET  
CLEVELAND, OH 44114

EXAMINER

NUNEZ, JORDANY

ART UNIT

PAPER NUMBER

2179

MAIL DATE

DELIVERY MODE

06/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/724,950	<b>Applicant(s)</b> WILSON ET AL.	
	<b>Examiner</b> Jordany Núñez	<b>Art Unit</b> 2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 2-6,9,10,12-18 and 20-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,7,8,11 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 2179

**DETAILED ACTION*****Election/Restrictions***

Claims 1, 11, 19 are generic to the following disclosed patentably distinct species: Gesture, classified 715/863 (e.g., claims 2-6, 9, 10, 13-17, 20-26, 29, 36-38); wireless control, classified 715/864 (e.g., claims 12, 18, 27, 28); 3D image system, classified 715/757 (e.g., claims 7, 8); and profile, classified 715/789 (e.g., claims 30-35). The gesture species includes two further subspecies, a non-medical gesture subspecies (e.g., claims 2-6, 9, 10, 13-17, 20-26, 29), and a medical gesture subspecies (e.g., claims 36-38). The profile gesture includes two further subspecies, a non-operating room profile species (e.g., claims 33-35), and an operating room profile species (e.g., claims 30-32). The species are independent or distinct because no two species share functionality, and therefore are not connected in at least operation. Furthermore, the subspecies are independent or distinct because no two subspecies are directed to the same area of endeavor and therefore they are not connected in at least effect. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species/subspecies, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

During a telephone conversation with Rayaprolu on 6/6/07 a provisional election was made with traverse to prosecute the invention of the 3D image system, claims 7, 8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 2-6, 9-10, 12-18, 20-38 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Art Unit: 2179

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kumar (US6222465).

As to claim 1, Kumar shows:

A system that facilitates a user interface, comprising:

a gesture that is interpretable as a user command to control a computer system (abstract);

and a 3-D imaging component that captures the gesture in the form of a gesture image,

processes the gesture image, and interprets the gesture image to execute the user command for control of the computer system (column 3, lines 34-47).

As to claim 19, Kumar shows:

A method of controlling a computer system using a gesture, comprising:

capturing one aspect of the gesture in the form of a 3-D gesture image (column 3, lines 34-47);

processing the 3-D gesture image to determine an associated user command (column 3, lines 34-

47);

Art Unit: 2179

and executing the user command to effect manipulation of an object of the computer system abstract).

References to specific columns, figures or lines should not be limiting in any way. The entire reference provides disclosure related to the claimed invention.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar in view of Kazama et al. (US6111580, hereinafter Kazama).

As to claim 7:

Kumar shows a system substantially as claimed, as specified above.

Art Unit: 2179

Kumar fails to specifically show: determining when an operator is looking in the direction thereof.

In the same field of invention enabling a user to operate equipment using gesture input (column 1, lines 5-10), Kazama teaches: an apparatus and method for controlling an electronic device. Kazama further teaches: controlling an apparatus according to the user's gaze of sight and gesture directed to the center point of a display (column 3, lines 60-67).

Thus, it would have been obvious to one of ordinary skill in the art, having the teachings of Kumar and Kazama at the time that the invention was made, to have combined the controlling an apparatus according to the user's gaze of sight and gesture directed to the center point of a display of Kazama with the system as taught by Kumar.

One would have been motivated to make such combination because a way to activate equipment simply by a simple action of a user would have been obtained and desired, as expressly taught by Kazama (column 2, lines 10-13).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar in view of Dempski et al (US7007236, hereinafter Dempski).

As to claim 8:

Kumar shows a system substantially as claimed, as specified above.

Kumar fails to specifically show: the 3-D imaging component is distributed across the computer system and at least one other computer system.

In the same field of invention, Dempski teaches: a lab window collaboration system. Dempski further teaches: a 3-D imaging system that is distributed (figure 1).

Thus, it would have been obvious to one of ordinary skill in the art, having the teachings of Kumar and Dempski at the time that the invention was made, to have combined the 3-D imaging system that is distributed of Dempski with the system as taught by Kumar.

Art Unit: 2179

One would have been motivated to make such combination because a way to enable merging of video conferencing and three-dimensional computer applications would have been obtained and desired, as expressly taught by Dempski (column 1, lines 46-50).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kumar in view of Pryor (US6750848).

As to claim 11:

Kumar shows a system that facilitates (e.g., does not prevent) a user interface in a medical environment, comprising:

a gesture that is interpretable as a user command to control a computer system (abstract);

a 3-D imaging component that captures the gesture in the form of a gesture image, processes the gesture image, and interprets the gesture image to execute the user command for control of the computer system (column 3, lines 34-47).

Kumar fails to specifically show: a wireless control device the orientation of which is used in combination with the gesture to control the computer system.

In the same field of invention, Pryor teaches: a man machine interface for controlling a display. Pryor further teaches: a wireless control device the orientation of which is used in combination with the gesture to control the computer system (column 4, lines 16-23).

Thus, it would have been obvious to one of ordinary skill in the art, having the teachings of Kumar and Pryor at the time that the invention was made, to have combined the wireless control device the orientation of which is used in combination with the gesture to control the computer system of Pryor with the system as taught by Kumar.

One would have been motivated to make such combination because a way to have sensors individually discern image sources would have been obtained and desired, as expressly taught by Pryor (column 4, lines 16-23).

Art Unit: 2179

(Examiner notes that since the system facilitates a user interface in a medical environment, the system claimed merely needs not prevent the user interface in said medical environment. As written, the medical environment of this claim is not read as positively recited)

References to specific columns, figures or lines should not be limiting in any way. The entire reference provides disclosure related to the claimed invention.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Oh [U.S. 5616078]

Oohara et al. [U.S. 5801704]

Maggioni [U.S. 5828779]

Platzker et al. [U.S. 5528263]

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordany Núñez whose telephone number is (571)272-2753. The examiner can normally be reached on Monday Through Thursday 9am-7:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (571)272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN  
6/5/2007

  
**WEILUN LO**  
**SUPERVISORY PATENT EXAMINER**